



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 30, 2004

Dr. Jill Shugart  
Executive Director  
Region 10 Education Service Center  
P. O. Box 831300  
Richardson, Texas 75083-1300

OR2004-8322

Dear Dr. Shugart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210158.

The Region 10 Education Service Center (the "center") received a request for, among other things, "copies of all transactions changes through the payroll department of Wilmer-Hutchins [Independent School District (the "district")] and certain information regarding a named individual over specified time periods. You represent that the other requested information has either been released to the requestor or does not exist.<sup>1</sup> You assert that the center is not the custodian of the remaining requested information, and therefore the submitted information need not be released. In the alternative, you claim that the remaining requested information is excepted from disclosure under section 552.102 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you assert that the center is not the custodian of record for this information, and it should be requested from the owner of the data. However, you explain that the district is a data processing client of the center. Upon review, we find that the submitted information was created and is maintained by the center in connection with its official business. *See* Educ. Code § 8.051(c) (each regional education service center shall provide services that

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<sup>1</sup>We note that the Public Information Act ("Act") does not require the center to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

enable school districts to operate more efficiently and economically). Accordingly, we conclude that the submitted information must be released to the requestor, unless an exception to disclosure applies. *See* Gov't Code § 552.002(a) ("public information" is information collected, assembled, or maintained under law or ordinance or in connection with transaction of official business by a governmental body).

You assert section 552.102 of the Government Code, which excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test for whether information is protected under section 552.102 is the same as the test for whether information is protected by the common law right to privacy under section 552.101 of the Government Code.<sup>2</sup> *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together.

The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). The personal financial information we have marked must be withheld under section 552.101 of the Government Code in conjunction with common law privacy.

Additionally, we note that section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Due to the relationship between the center and the district, we find that the center must contact the district and verify whether a timely section 552.024 election has been made by the district employees in question. For employees who timely elected to keep their personal information confidential, you must withhold this information under section 552.117(a)(1) of the Government Code. The center may not withhold this information under section 552.117(a)(1) for employees who did not make a timely election to keep the information confidential.

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<sup>2</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and it encompasses the doctrine of common-law privacy.

If section 552.117 of the Government Code is inapplicable, the submitted social security numbers must be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).<sup>3</sup> *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the responsive information are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the center pursuant to any provision of law enacted on or after October 1, 1990.

Finally, the submitted account numbers are confidential under section 552.136 of the Government Code, which states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Thus, pursuant to this section, the center must withhold the account numbers we have marked.

In summary, we conclude that: 1) the center must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy; 2) for district employees that made a timely election under section 552.024, the center must withhold these employees’ section 552.117 information; 3) the submitted social security numbers may be confidential under federal law; and 4) the account numbers must be withheld under section 552.136 of the Government Code. All remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

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<sup>3</sup>Section 552.101 of the Government Code also encompasses information made confidential by other statutes.

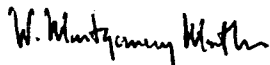
general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a). If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/krl

Ref: ID# 210158

Enc: Submitted documents

c: Mr. Cedric Davis  
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(w/o enclosures)